Ky. Rev. Stat. Ann. §342.732 (Michie 1993).

Income Benefits and Retraining Incentive Benefits for Occupational Pneumoconiosis.

(1) Notwithstanding any other provision of this chapter, income benefits and retraining incentive benefits for occupational pneumoconiosis resulting from exposure to coal dust shall be paid as follows:

(a) If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) X-rays and reports of the X-rays which conform to the standards for X-rays contained in subsection (2) of KRS 342.316, he shall award a one (1) time only retraining incentive benefit which shall be in an amount equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage but no more than seventy-five percent (75%) of the state average weekly wage as described by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period not to exceed two hundred and eight (208) weeks. The one (1) time only retraining incentive benefit awarded under this paragraph may be collected semimonthly as provided in KRS 342.040, by the employee while he continues to work in the mining industry. The retraining incentive benefit may be collected in a lump sum when the employee leaves his hazardous employment in the mining industry if the parties agree and the agreement is approved by the administrative law judge. Based upon this examination, the administrative law judge may make appropriate findings and enter an award if indicated.

(b) If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1 or 1/2, based on the latest ILO International Classification of Radiographics,

and respiratory impairment resulting from the exposure to coal dust as evidenced by spirometric test values of fifty-five percent (55%) or more but less than eight percent (80%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association, there shall be an irrebuttable presumption that the employee has an occupational disability rating of seventy-five percent (75%) resulting from exposure to coal dust and the administrative law judge shall award an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage multiplied by the disability rating of seventy-five percent (75%) but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period not to exceed four hundred and twenty-five (425) weeks.

(c) If the administrative law judge finds that an employee has radiographic classification of category 1/0, 1/1 or 1/2, based upon the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the Guides to the Evaluation of permanent Impairment published by the American Medical Association, there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust and the administrative law judge shall award income benefits which shall be equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined by KRS 342.740. Income benefits awarded under this paragraph shall

be paid to the employee during such disability.

(d) If the administrative law judge finds that an employee has occupational pneumoconiosis with a radiographic classification of category 2/1, 2/2, 2/3, 3/2, 3/3, or progressive massive fibrosis, based on the latest ILO International Classification of Radiographics, there shall be an irrebuttable presumption that the employee is totally disabled resulting from the exposure to coal dust and the administrative law judge shall award income benefits equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability.

(2) The presence of respiratory impairment resulting from exposure to coal dust shall be established using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV_1) determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.

(3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge shall make his decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to such occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence

of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula (103.5 - 0.142X), where X equals the claimant's age at the time of the arterial blood gas study.